Regular Arbitration

In the Matter of the Arbitration	)	Grievant: Laurie Mahoney
	)	
between	)	
	)	
City of Oroville CA	)	Office: City of Oroville, CA
(hereinafter "The City")	)	
	)	
and	)	Case No: C.S.M.C.S. ARB 05-0601
	)	
United Public Employees of California,	)	Arbitration Award
Local 792, Oroville Mid-Management	)	
Association (hereinafter "the Association")	)	

Before: Arbitrator James G. Merrill

Appearances:

For the City: Mark Habib, Esq. and Dwight L. Moore, Esq.

For the Union: Lee Dunlap, Advocate

Place of Hearing: 1735 Montgomery Street, Oroville, CA

Date of Hearing: August 25, 2006

Award:

1. The grievant is entitled to 14 days notice of layoff which was officially given verbally on December 7 2005. She shall be compensated at her former salary for 14 calendar days from December 7, 2005.
2. The City Administrator within 15 days of this award shall decide to maintain the grievant in Step F or effective December 21, 2005 retroactively place the grievant in Step G of the Parks Maintenance Technician III position. This decision shall take into consideration all of the factors outlined in Section 8.3 of the MOU and Section 8.5 of the Personnel Rules and Regulations. The City Administrator's decision is final and binding and not grievable since either decision will now be within her discretionary authority as outlined in the Discussion section of this Award.
3. The City did not violate the Memorandum of Understanding when it decided to abolish the grievant's position as Manager of Parks and Trees and to post and fill a new position.
4. The grievant's claim for higher level pay is denied, as the issue was not incorporated into this grievance.

Dated: September 25, 2006

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James G. Merrill, Arbitrator
Livermore Valley, California

Case No: C.S.M.C.S. ARB 05-0601

Background

On or about December 21, 2005, the City of Oroville received a grievance from Laurie Mahoney in connection with the City of Oroville's decision to eliminate the Parks and Trees Manager position. The grievant claimed that the position should not have been eliminated, she was not provided 14 calendar days notice of layoff, and she was improperly placed in Step F as a Parks Maintenance Technician III.

The City of Oroville Council voted during a Council meeting in August 2005 to combine the duties of the grievant's position into a new position. The City staff met with the Association in a "meet and confer" session. It was agreed that the grievant would remain in her position until the new position of Assistant Director of Parks and Trees was filled. The position of Assistant Director of Parks and Trees was posted in October 2005. No applications were received.

On December 6, 2005 the City Council voted to approve a new position of Public Works Operations Manager which was filled on December 7, 2005 by Mr. Richter. The duties of the Manager of Parks and Trees were incorporated as part of the duties of the Public Works Operation Manager position. On December 7, 2005 the HR Analyst met with the grievant and advised her that if she did not want to be laid off she could exercise her right to bump back to her previous job as a Parks Maintenance Technician III. She submitted that request in a letter dated December 7, 2005. She was reclassified to that position effective December 7, 2005 and placed in Step F.

The City and the Association requested a list of Arbitrators from the State Mediation and Conciliation Service, Department of Industrial Relations, State of California. By letter of June 6, 2006, this Arbitrator was selected by the parties for the above captioned matter.

Issues

Did the City of Oroville provide the grievant 14 days notice of layoff in accordance with the Memorandum of Understanding (J-2) and the Personnel Rules & Regulations, Section 13.3 (J-1)? If not what is the appropriate remedy?

Did the City of Oroville violate the Memorandum of Understanding (J-2), Section 8.3 and the Personnel Rules & Regulations (J-1), Section 8.4, when it slotted the grievant's wage rate in Step F of the Parks Maintenance Technician III position? If so what is the appropriate remedy?

Did the City of Oroville violate the Memorandum of Understanding (J-2) when it eliminated the grievant's position of Manager of Parks and Trees and combined her duties into another position? If so what is the appropriate remedy?

Is the Association's claim that the grievant was performing higher level work subsequent to her downgrade procedurally an issue in this grievance? If so was the grievant performing higher level work and what is the appropriate remedy?

Pertinent Provisions of the Memorandum of Understanding between the City of Oroville and the Oroville Mid-Management Association (J-2)

Section 4. City Rights and Responsibilities

"The City retains, solely and exclusively, all the rights, powers and authority exercised or held prior to the execution of this Memorandum, except as expressly limited by a specific provision of this Memorandum. Without limiting the generality of the foregoing, the rights, powers, and authority retained solely and exclusively by the City enumerated herein, include, but are not limited to, the requirements of this Memorandum and/or any provision of law whether it be statutory or judicial. To manage and direct its business and personnel; to manage, control and determine the mission of its departments, building facilities, and operations; to create, change, combine or abolish jobs, departments and facilities in whole or in part; to subcontract or discontinue work for economic or operational reasons; to direct the work force; to increase or decrease the work force and determine the number of employees needed; to hire, transfer, promote and maintain the discipline and efficiency of its employees to establish work standards, schedules of operation and reasonable work load; to specify or assign work requirements and require overtime; to schedule working hours and shifts; to adopt rules of conduct and penalties for violation thereof; to determine the type and scope of work to be performed and the services to be provided; to determine the methods, processes, means, and places of providing services and to take whatever action necessary to prepare for and operate in an emergency. Nothing in this Section shall be construed to limit, amend, decrease, revoke or otherwise modify the rights vested in the City by any regulating authorizing or empowering the City to act or refrain form acting."

Section 8.3

"All salary steps, A,B,C,D,E,F, and G are to be based on merit. Advancements shall not be automatic but shall depend upon increased service value of an employee to the City as exemplified by recommendations of the employee's supervising official, length of service, productivity, performance record, special training undertaken, or other pertinent evidence. To be eligible for advancement to Step F or G the member must have completed two (2) years in his/her current classification."

Section 24 Step 4c

"*In conducting the appeal the Arbitrator shall review the evidence to determine whether the City Administrator's decision regarding the grievance was and abuse of discretion. For the Arbitrator to find and abuse of discretion, the record evidence must show that the City Administrator's decision was not supported by the facts, findings or substantial*

evidence, the decision was reached in an arbitrary manner or that the decision-making process was not conducted in accordance with the procedure in the Memorandum of Understanding.

Pertinent provisions of the City of Oroville Personnel Rules & Regulations (J-1)

Section 8.4 Merit Increases

"No salary advancement shall be made so as to exceed a maximum rate established in the plan for the class to which the employees position is allocated unless approved by a majority of the City Council and a new rate established.
Advancement shall not be automatic, but shall depend upon increased service value of an employee to the City as exemplified by recommendations of one's supervising official, length of service, productivity, performance record, special training undertaken, or other pertinent evidence. Full-time, part-time or probationary employees may be considered eligible for merit increases in salary according to the following schedule. (Amended-Resolution 5228)"

1. *"The letters A,B,C,D, and E respectively, denote the various progressive steps in salary range. Employees will normally be assigned Step A at initial hiring."*

2. *"Salary Step B upon completion of six (6) months of unbroken employment in Step A, where the employee has demonstrated satisfactory job progress and normally increasing productivity, and upon written recommendations of the department head and approval of the Personnel Officer."*

3. *" Salary Step C upon completion of one (1) year of unbroken service in Step B where the employee has demonstrated satisfactory job progress and normally increasing productivity, and upon written recommendations of the department head and approval of the Personnel Officer."*

4. *"Salary Step D and E upon completion of one (1) year of employment at the previous step where the employee has demonstrated satisfactory job progress and productivity, and upon written recommendations of the department head and approval of the Personnel Officer."*

Section 8.5 Salary on Demotion

"Any employee who is demoted voluntarily shall not be required to serve a new probationary period and shall have their salary set at the salary step in the range for the lower class for which they quality, as recommended by the department head and approved by the Personnel Officer, provided that in no event shall the new step be lower in alphabetical sequence than the step of the range held prior to the demotion."

Rule 13. Layoff Policy and Procedures

Section 13.3 Notification

"Employees to be laid off shall be given, whenever possible, fourteen (14) calendar\days prior notice."

Summary of the Association's Position

The Association Representative asserted that the grievant was not notified of her layoff and options until at least December 7, 2005. Some information regarding the proposed abolishment of the grievant's position was communicated to the Association in August 2005. The City and the Association met and conferred. Those discussions led to a decision to not abolish the grievant's position until the new position of Assistant Director of Parks and Trees was filled. Therefore official notice was not given until at least December 7, 2005 or later.

Liz Ehrenstrom, Human Resources Analyst, was called as a witness for the Association. In summary she testified to the sequence of events which led to the grievant's downgrade to a Parks Maintenance Technician III. She testified that the grievant was aware that her position of Manager of Parks and Trees would be abolished. She knew that fact in August 2005. In addition, Ms. Ehrenstrom testified that on December 7, 2006 she met the grievant and verbally advised her that her position of Manager Parks and Trees was abolished effective that date. She advised the grievant that if she desired to bump down to a Parks Maintenance Technician III position to give her a letter to that effect immediately. The grievant provided Ms Ehrenstrom a letter requesting a downgrade to a Parks Maintenance Technician III position. Ms. Ehrenstrom stated that the placement of the grievant's salary in Step F was proper and consistent with the regulations.

Steven Allen, Union Representative, testified to the events from August 2005. When he was advised that the grievant's position was going to be abolished, he met with the City staff and reached agreement to keep the grievant as a Manager until the new position was filled. The new position was filled on December 7, 2005. At that time he assisted the grievant by filing the grievance which set forth the issues in this case. He met with Ms. Ehrenstrom and the City Administrator and tried to convince them that the layoff notice did not meet the contractual requirements and the grievant should be placed in Step G based on her experience. He stated that the provisions of Section 8.5 of the Personnel Rules and Regulations provides "Any employee who is demoted voluntarily shall not be required to serve a new probationary period and **shall have their salary set at the salary step in the range for the lower class for which they qualify, as recommended by the department head and approved by the Personnel Officer."** He stated that the language allows the Administrator to place the grievant in Step G of the position. He believed that the grievant's position should not be abolished as it seemed to be needed.

The grievant, Laurie Mahoney testified. The key points of her testimony were, that she only received notice of her status on December 7, 2007 when Ms. Ehrenstrom advised her that her job was eliminated on that date and she needed to provide a letter requesting a downgrade. She complied
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with that request, however she was upset that she was placed in Step F of the downgraded position. The grievant stated that she was told in August that she would be placed in Step G if downgraded. She also testified she was unaware of any posting of the position of Assistant Director of Parks and Trees. If she was aware of it she would have applied for it. She admitted seeing the posting on the Web site. She also stated that she continued to perform her Manager duties after her downgrade through June 2006.

The Association Representative stated that the City Administrator did not place the grievant's salary step in accordance with Section 8.5 of the Personnel Rules & Regulations. The grievant has 20 years of service. She was a Parks Maintenance Technician III for over 10 years. She was a Manager of Parks and Trees for over 6 tears. The downgrade of the grievant to a Parks Maintenance Technician III resulted in reducing her salary by $15,463. If the grievant remained as a Parks Maintenance Technician III, she would have reach Step G. In addition, Section 8.5 (Salary on Demotion) of the Personnel Regulations states that " *"Any employee who is demoted voluntarily shall not be required to serve a new probationary period and shall have their salary set at the salary step in the range for the lower class for which they quality, as recommended by the department head and approved by the Personnel Officer, provided that in no event shall the new step be lower in alphabetical sequence than the step of the range held prior to the demotion."* The City Administrator had the authority to place the grievant in Step G based on the above rule. The City Administrator erred in placing the grievant in Step F.

The Association Representative asserted that when it was determined to combine the duties of the grievant's position with other duties to create a new position the grievant was not given the opportunity to compete for the new position of Assistant Director of Parks and Trees... She was unaware of a posting for that new position. In fact she was still performing the duties of her former position when she was downgraded. The grievant continued to act as a Parks and Tree Manager from December 7, 2005 through June 2006. Therefore she is entitled to higher level pay for that time. It is the position of the Association that the higher level pay issue is part of this grievance and the Arbitrator should rule on the merits of that issue.

In summary, the City violated the Memorandum of Understanding and the Personnel Rules and Regulations by not providing 14 days notice to the grievant when she was downgraded and her salary placed in Step F of the Parks Maintenance Technician III position. In addition the grievant had no opportunity to be considered for the new job of Assistant Director of Parks and Trees. She was not aware of any posting. She is also entitled to higher level pay at the Manager of Parks and Trees salary from December 7, 2005 through June 2006.

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Summary of the City's Position

The City Representative states that the grievant was given notice of her job being abolished in August 2005 as well as on December 7, 2005. The August date met the requirements of the Section 13.3 of the Personnel Rules and Regulations regarding the 14 calendar days advance notice of layoff.

The City Representative stated that the placement of the grievant's pay at Step F of the position of Parks Maintenance Technician III was the only option based on Section 8.3 of the Memorandum of Understanding. In addition the City Administrator had the authority and discretion to decide to place the grievant's salary at Step F. She was placed in Step F of her position as Manager of Parks and Trees in March of 2005. She cannot advance to Step G for 2 years from that date. Therefore the City Administrator was correct in placing the grievant salary in Step F.

Sharon Atteberry City Administrator testified that her decision to place the grievant in Step F of the Parks Maintenance Technician III position was based on the provisions of Section 8.3 of the Memorandum of Understanding. She believed that she had no authority to place the grievant in Step G as the City requires employees to serve 2 years in Step F before progressing to Step G. She was asked that if the language in Section 8.3 which states that "To be eligible for advancement to Step F or G, the employee must have completed two (2) years in his/her current classification" applies only to serving 2 years in the position. She stated that was what it meant. She also stated that she had broad discretion in placing employees into Steps based on the MOU and the Personnel Rules and Regulations.

The City Representative stated that the City has a management right to abolish or combine positions and it did not violate the Memorandum of Understanding when the City Council approved the abolishment of the Manager of Parks and Trees position. Those duties were incorporated into the new position of Public Works Operations Operations Manager.

Finally the Association's assertion that the grievant is entitled to higher level pay from the date of December 7 2005 through June of 2006 was not an issue raised in this grievance and is not arbitrable in this arbitration. The issue was never raised before this arbitration hearing and the Arbitrator should procedurally deny the grievance on this issue.

In summary the City Attorney advised the arbitrator that pursuant to Section 24.4c of the Memorandum of Understanding the Arbitrator's authority to rule is governed by the following language. "*In conducting the appeal the Arbitrator shall review the evidence to determine whether the City Administrator's decision regarding the grievance was and abuse of discretion. For the Arbitrator to find and abuse of discretion, the record evidence must show that the City Administrator's decision was not supported by the facts, findings or substantial evidence, the decision was reached in an arbitrary manner or that the decision-making process was not conducted in accordance with the procedure in the Memorandum of Understanding.*

The City Representative states the grievance should be denied in its entirety.

Discussion

The Arbitrator reviewed all the evidence and testimony as well as the relevant provisions of the Memorandum of Understanding and Personnel Rules and Regulations.

The City decided to reorganize the positions in the Parks and Tree organization by combining the Manager of Parks and Trees duties with the duties of another position. On August 8, 2005 the City Council approved such an action. The City Administrator commenced discussions with the Association regarding the impact of that decision on the grievant. The discussions led to an agreement to maintain the grievant in her current job until a new position was filled. There were no discussions or notice was given to the grievant outlining a layoff on a specific date. A lay off notice is a specific notification to an employee which includes a specific date and provides any options if any to the employee. Notification that at some future date, the grievant's job will be abolished does not constitute a layoff notice pursuant to Section 13.3 of the Personnel Rules and Regulations.

However, the verbal notice given to the grievant by the Human Resources Analyst on December 7, 2006 met the definition of a layoff notice. She advised the grievant that effective immediately her job was eliminated and in lieu of layoff she could bump to a Parks Maintenance Technician III position. The grievant provided a written response on December 7, 2005 that she would exercise her bumping rights. However the City erred by downgrading the grievant effective December 7, 2005 as that date was the notification of layoff and the effective date should have been December 21, 2005. (Fourteen (14) calendar days notice).

The City's salary policies set forth in Section 8.3 of the Memorandum of Understanding provide that an employee must be in there current position for 2 years to advance to Step F or G. In addition to advance from Step F to G the employee must be in step F for 2 years. This provision of the Memorandum of Understanding applies to advancement from one step to another within the same job classification. The City Administrator testified that Section 8.3 did not allow her to advance the grievant's salary from F to G when she was downgraded to a Parks Maintenance Technician III.

The salary policy relating to downgrades is separate and not related to the provisions regarding advancement in an employee's current position. It states that the employee cannot be downgraded lower than the step they left the position. It does not preclude being placed in a higher step than the one left. Therefore the City Administrator's assumption that she had no authority to place the grievant in Step G is incorrect. Having said that, the salary policy provides latitude and broad discretion to place employees in steps. Since the City Administrator made a decision to place the grievant in Step F based on an incorrect assumption, it is incumbent upon her to now make a decision based on correct assumptions. The City Administrator shall review her decision based on the ruling that she has the authority to place the grievant in Step G if she decides it is appropriate based on the provisions of the factors in Section 8.3 of the MOU and Section 8.5 of the Personnel Rules and Regulations. The City Administrator's decision to either maintain the grievant in Step F or place her in Step G retroactively to December 21 2005 is not grievable since she will not be abusing her discretion in either case following the correct assumptions of her authority.

The provisions of Section 4 of the Memorandum of Understanding provide the City wide latitude in making decisions regarding organizations, positions, duties, and abolishment or combining positions. Therefore the City had the right to abolish the grievant's position and combine her duties into the new position of Public Works Operations Manager. In addition there is no evidence to support the Association's claim that the position of Assistant Director Parks and Trees was not properly posted and advertised. The fact that the grievant may not have been aware of it is not sufficient to support the Association's position.

A review of the record and evidence does not support that the Association added the issue of the grievant performing higher level work from December 7, 2005 through June 2006. There were no discussions with the City or letters adding that issue to the grievance. Therefore, the issue is not part of this Arbitration. The Association should have filed a new grievance in January claiming the grievant was performing higher level duties. They failed to do so.

Award

1. The grievant is entitled to 14 days notice of layoff which was officially given verbally on December 7, 2005. She shall be compensated at her former salary for 14 calendar days from December 7, 2005.
2. The City Administrator within 15 days of this award shall decide to maintain the grievant in Step F or effective December 21, 2005 retroactively place the grievant in Step G of the Parks Maintenance Technician III position. This decision shall take into consideration all of the factors outlined in Section 8.3 of the MOU and Section 8.5 of the Personnel Rules and Regulations. The City Administrator's decision is final and binding and not grievable since either decision will now be within her discretionary authority as outlined in the Discussion section of this Award.
3. The City did not violate the Memorandum of Understanding when it decided to abolish the grievant's position as Manager of Parks and Trees and to post and fill a new position.
4. The grievant's claim for higher level pay is denied, as the issue was not incorporated into this grievance.

Date of the Ruling: September 25, 2006

James G. Merrill, Arbitrator
Livermore Valley, California